No. 74-779

[redacted] AND CABLE INDUSTRIES, INC.,
Petitioners,

v.

[redacted] DE CONSTRUCCIONES TECNICAS AND
ARCT, Inc.,
Respondents.

[redacted] IN SUPPORT OF PETITION FOR WRIT
OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE FOURTH CIRCUIT

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Attorneys for Petitioners

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-770

CELANESE CORPORATION AND FIBER INDUSTRIES, INC.,
Petitioners,

v.

ATELIERS ROANNAIS DE CONSTRUCTIONS TEXTILES AND ARCT, INC.,
Respondents,

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

I. Respondents' "Brief in Opposition" to the petition for writ of certiorari in this case is significantly misleading in at least the following respects:

1. It is *incorrect* that the action in South Carolina to which respondents are parties is "unrelated" (R. Br. 2, footnote) to the Florida litigation in which petitioners are parties. Both cases importantly involve, *inter alia*, the legality under the antitrust laws of a March 31, 1964 "patent exploitation treaty" between respondents and petitioners' opponents in the Florida litigation (Pet. 7). Judge Gordon of the District Court for the Middle District of North Carolina, whose challenged order underlies

Question 3 of the petition, characterized the Florida litigation as "similar and related" to the South Carolina litigation (Pet. 18a). Significantly, in an order dated December 19, 1974, the Honorable Robert W. Hemphill, district judge presiding over the South Carolina litigation, specifically characterized the Florida litigation as "the companion case to this [South Carolina] suit. . ." [1]

2. Respondents are *wrong* that the district court orders, affirmance of which by the Fourth Circuit majority led to the pending petition, were "interlocutory" (R. Br. 2). Respondents' attempt to dismiss Appeal No. 73-2450 [2] on that specific ground resulted in a unanimous March 28, 1974 order by the Fourth Circuit panel, explicitly holding that the district court order was final and hence appealable under 28 U.S.C. 1291.[3] Not even respondents

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[1] Pertinent portions of the 19-page "Supplemental Order to Order of May 30, 1974" entered December 19, 1974 by Judge Hemphill are reproduced, *infra*, at 1b to 10b. The cited characterization, from note 4, p. 6 of the order as entered, appears at 3b.

As the distribution list (1b) shows, this "supplemental order" was mailed on the date of entry to Granville M. Brumbaugh and Arthur O. Cooke, counsel who subsequently signed the Respondents' "Brief in Opposition" in this Court.

[2] Appeal No. 73-2450 in the court below was from the order of the District Court for the Middle District of North Carolina. Appeal No. 73-1930 was from the order of the District Court for the District of South Carolina. The two were consolidated for briefing and argument below.

[3] The March 28, 1974 order of the Fourth Circuit appears *infra*, 11b to 12b.

[4] See the "Statement of Issues Presented for Review", reproduced at 13b to 14b, from pp. 1-2 of petitioners' Brief on Appeal below. In their reply brief below, petitioners further emphasized that "Contrary to the contentions of the ARCT companies . . . there is *no issue* on this consolidated appeal of an alleged abuse of discretion by either court below. Rather, both appealed decisions rest upon misapplications of the law. . . ." (pp. 1-2). In seeking rehearing below, petitioners presented reasons 3, 4 and 5 which

have previously suggested that Appeal No. 73-1930 in any way involved an "interlocutory" order. The Fourth Circuit reviewed *both* orders on their merits in a consolidated appeal in recognition of the fact that they cannot and will not be reviewed on appeal in the Florida litigation to which they are ancillary and that hence, they fall within the collateral order doctrine of *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949).

3. The representation that the district court orders which the Fourth Circuit majority affirmed were "discretionary" (R. Br. 1) is question-begging. The questions posed in the petition—which were also squarely posed in the Fourth Circuit and hence are not in any sense "contrived" (R. Br. 3)—seek an answer to whether district courts *have power*, discretionary or otherwise, to take any of the challenged actions.

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correspond respectively to issues subsumed in Questions 1, 2 and 3 of the petition and are as follows:

> "3. The opinion fails to explain how Crouzet—by operation of law a resident of North and South Carolina for service of process in his capacity as president of the ARCT French and American companies—legitimately can claim *bona fide* 'non-resident' status for purposes of immunity from service of a subpoena to testify.
>
> "4. To the extent that the decision tacity approves the South Carolina court's unilateral suspension of its clerk's authority to issue a subpoena directed to Crouzet and other French witnesses, it creates a dangerous precedent for arbitrary suspension of the federal rules by district courts generally, which in the narrow compass of Rule 45, results in shifting the burden of proof from the party seeking to quash a subpoena to the party on whose behalf it is sought to be issued.
>
> "5. To the extent the decision affirms the order of the North Carolina district court, it effectively excises the 'good cause' requirement from Rule 26(c) and invests district courts with unlimited discretion to arbitrarily foreclose the taking of depositions." (Petition for Rehearing, p. 2).

If, as petitioners contend, the power to enter the challenged orders was *lacking*, then *a fortiori* their entry was a usurpation rather than a mere "abuse"—and inquiry by the court below into the issue of "abuse of discretion" (R. Br. 3) was a footless exercise.

4. It is *not correct* that "neither [district court] order denies petitioners the right to compel Henri Crouzet to appear and be deposed in their Florida action" (R. Br. 2).

Respondents imply that the testimony could be procured in South Carolina *if* Crouzet came there "for any other purpose" than to give testimony in the South Carolina litigation (R. Br. 3). They are careful, however, *not* to suggest that the South Carolina district court has ever rescinded its initial oral instruction to its Clerk to issue no subpoenas for Crouzet testimony to be taken in the Florida case—no doubt because that action still stands. The suggestion that some "other purpose" for Crouzet's presence in South Carolina might lead to a different result there is hollow in view of this standing instruction and the district court's failure to follow the case law that would have required proof that Crouzet appeared in South Carolina *solely* to give testimony in the South Carolina case as a prerequisite to the grant of "immunity." [5]

The North Carolina order is equally a *de facto denial* of petitioners' right to take the Crouzet testimony. Petitioners showed, before the order was entered, that as a matter of law the Crouzet testimony taken in the South Carolina action where neither petitioners nor their opponents in the Florida case were permitted to be represented is inadmissible for any purpose in the Florida

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[5] See in this regard *Republic Productions, Inc.* v. *American Federation of Musicians*, 173 F. Supp. 330, 333-4 (S.D.N.Y. 1959); *Dillingham* v. *Anderson*, 126 F. Supp. 221 (D. Hawaii, 1954).

case. Petitioners also showed at the same time, as a matter of law and fact, that letters rogatory are *not* enforced in France. It is difficult to envision a stronger demonstration that a combination of the South Carolina deposition transcripts with letters rogatory *could* "not produce the information", *including evidence*, "needed by petitioners in their Florida action" (R. Br. 3). Entry of the North Carolina order in the teeth of that showing demonstrates irrefutably that the purpose and effect of the order is to deny petitioners the right to take Crouzet's testimony.

II. The South Carolina court's order of December 19, 1974 (*infra*, 1b to 10b) supplies a further persuasive reason for granting certiorari as to Question 1. As the petition points out (pp. 17-18) the immunity doctrine should be "reevaluated in relation to the 'judicial necessities' of modern complex multi-district litigation". The December 19 South Carolina order not only recognizes that the Florida case is a "companion case" to the South Carolina case (3b), but holds that facts commonly involved in both actions *prima facie* demonstrate that the "patent exploitation treaty" at issue in both was consummated in bad faith incident commission of a fraud, crime or tort, thereby vitiating the attorney-client privilege for all facts relating to its consummation and implementation (4b to 10b). The decision of the Fourth Circuit majority below was made without benefit of this subsequent important holding of the South Carolina court.

This December 19, 1974 South Carolina order highlights the inconsistency between the majority decision below and the authorities cited at Pet. 18 which hold that "immunity" is unavailable to defeat the right to take testimony in one of two actions involving common fact questions, even when bad faith is *not* involved. This

situation alone suggests strongly that reevaluation of the immunity doctrine by this Court is overdue.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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Attorneys for Petitioners

APPENDIX

APPENDIX

OFFICE OF THE CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Columbia 29202
P.O. Box 867

December 19, 1974

Howard Burns, Esquire
Jay Greenfield, Esquire
Thomas A. Evins, Esquire
Granville A. Brumbaugh, Sr., Esquire
Rufus M. Ward, Esquire
Arthur O. Cooke, Esquire
T. T. Moore, Esquire
David Rabin, Esquire
McNeill Smith, Esquire
David L. Foster, Esquire
Charles B. Park, III, Esquire
William K. West, Jr., Esquire
Edward P. Perrin, Esquire
Fletcher C. Mann, Esquire
O. G. Calhoun, Esquire
Granville M. Pine, Esquire

Re: DMRC consolidated cases, C/A 71-306

Gentlemen:

I am enclosing a copy of Supplemental Order to Order of May 30, 1974 filed in the above matter this date.

Very truly yours,

Miller C. Foster, Jr.
Clerk

by: /s/ John C. Rogers
Deputy Clerk

enclosure

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

[Original Filed Dec. 19, 1974, Miller C. Foster, Jr.]

Consolidated Civil Action No. 71-306
Civil Action No. 70-968 and
Civil Action No. 69-1096
Also Civil Action Nos.

68-705; 69-777; 70-14; 70-189; 70-250; 70-295; 70-358; 70-385; 70-386; 70-391; 70-493; 70-622; 70-628; 70-677; 70-683; 71-87; 71-88; 71-89; 71-90; 71-91; 71-92; 71-93; 71-94; 71-95; 71-96; 71-97; 71-98; 71-99; 71-100; 71-101; 71-102; 71-115; 71-126; 71-127; and 71-283

THE DUPLAN CORPORATION,
Plaintiff,

—against—

DEERING MILLIKEN, INC., DEERING MILLIKEN RESEARCH CORPORATION, MOULINAGE ET RETORDERIE DE CHAVANOZ, ATELIERS ROANNAIS DE CONSTRUCTIONS TEXTILES, AND ARCT, INC.,
Defendants.

DEERING MILLIKEN RESEARCH CORPORATION,
Plaintiff,

—against—

THE DULAN CORPORATION AND
BURLINGTON INDUSTRIES, INC.,
Defendants.

THE DUPLAN CORPORATION, ET AL.,
Plaintiffs on the Counterclaim,

—against—

DEERING MILLIKEN RESEARCH CORPORATION,
Defendant on the Counterclaim,

and

DEERING MILLIKEN, INC., MOULINAGE ET RETORDERIE DE CHAVANOZ, ATELIERS ROANNAIS DE CONSTRUCTIONS TEXTILES, AND ARCT, INC.,
Additional Defendants on the Counterclaim.

SUPPLEMENTARY ORDER TO ORDER OF MAY 30, 1974

Another reason for this massive in-camera submission in this case is the bitterness, hostility, and distrust that the attorneys have developed for each other. Claims of privilege have been doubted and, in some situations, rightfully so. As a result, this court has been saddled with the burden of conducting this in-camera examination. This court has no qualms about saying that this has been the most arduous task it has ever undertaken in its 26 years of public service. This case has already been pending five years and, if it never gets to trial, it will not be because this judge has not tried, it will be because he has died![4]

[4] This display of gladiator-type advocacy appears to be prevalent in patent-antitrust suits. See Clark, the Risks and Costs of Patent Litigation: A House Counsel's View, 1973 Utah L. Rev. 618, 619-23, in which a patent attorney discusses the personal bitterness and burdensome, harassing discovery process in such suits. As an example, the author discusses the companion case to this suit in which many of the same parties are involved. In re Yarn Processing Patent Validity Litigation (M.D.Fla. 1968-present) is a consolidated multi-district case of 51 suits involving Leesona Corp., the chief competitor of the associates herein. In that case, four million

V

CRIME, FRAUD OR TORT EXCEPTION TO THE ATTORNEY-CLIENT PRIVILEGE

In this court's order of May 30, 1974, pages 31 and 32, it was stated that there must be a prima facie showing of a crime, fraud, or tort before an exception to the attorney-client privilege will be created, requiring production of otherwise confidential communications between an attorney and a client.

The throwsters have asserted that there were frauds perpetrated upon the United States Patent Office in the prosecution of certain applications and that there was a business tort committed by the settlement in 1964 of patent-antitrust litigation in Boston and South Carolina between the associates and Leesona Corporation, their chief competitor.

There has been a prima facie showing of frauds in prosecution of U.S. Pat. Nos. 3,137,119 and 3,382,656 by a finding of invalidity under 35 U.S.C. § 102(d), for filing the U.S. application more than one year after the foreign counterpart patent issued. See this court's order appearing at 353 F.Supp. 826 (D.S.C. 1973), affirmed per curiam, 487 F.2d 459 (4th Cir. 1973), cert. denied, 39 L.Ed.2d 874 (March 18, 1974). In the prosecution of applications, prima facie evidence of an intent to defraud the Patent Office could be found in the privileged communication itself. In such situations, a fraud exception to the attorney-client privilege is recognized by this court. Of course, such a finding is not to be taken as a presumption of this court's final disposition on the merits.

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documents have been produced and 250 witnesses deposed. This consolidated multi-district case embraces 37 suits. Here, only one million documents have been produced and a mere 85 witnesses deposed.

The throwsters have made a prima facie showing that various other frauds were perpetrated upon the Patent Office in the prosecution of some of the 18 other applications that issued as patents. Such findings appear in the analysis of various documents ruled upon in the appendix hereto, relating to the particular patent charged to be fradulently obtained. Such a finding removes the attorney-client privilege under the fraud exception, for communications among the corporate patent owner, the assignor-inventor, and the various patent attorneys and agents who handled the applications.

For some of these applications which have issued and are still valid patents, the privileged attorney-client communications submitted in-camera gave further prima facie evidence of a fraud on the Patent Office while other such communications tend to negate the commission of any fraud.

In both instances, this court has removed the attorney-client privilege because of the prima facie showing made from other documents. The associates have asserted that such a ruling is too harsh where the attorney-client communication shows that no such fraud was committed. They suggest that the privilege should be honored in such instances and the throwsters should be left to their own devices. This court is constrained to disagree.

Where a prima facie showing of fraud has been made from other documents, production will be ordered of otherwise privileged attorney-client communications which tend to show the innocence, as well as the guilt, of the parties charged with the fraud. With a prima facie showing of fraud staring in its face from other documents, the court will not deny production of in-camera documents tending to show innocence because to do so will effectively constitute a prejudgment of the case and cast a shadow upon the integrity of the court.

It is a serious charge that a fraud has been perpetrated upon the Patent Office, casting a doubt on the validity of the patent involved. The true state of affairs must come out. The innocent parties must be vindicated; valid patents should not continue to exist under any doubts and, where there has been a fraud, the patent should be invalidated.

There has also been a prima facie showing of a business tort, i.e., an antitrust violation under Sherman Act § 1 for an unreasonable restraint on trade, by the 1964 settlement agreement between the associates and Leesona Corporation. That a settlement of a patent case by competitors may constitute an antitrust violation was clearly established in *United States* v. *Singer Mfg. Co.*, 374 U.S. 174 (1963). Nevertheless, the fact of settlement does not establish by itself a prima facie showing of a business tort. There must be at least a prima facie showing of bad faith on the part of one party in entering into the settlement agreement. In a patent-antitrust case, this may be established by a showing that one party believed it had a substantial likelihood of success in declaring the opponent's patents invalid [5] and in proving the opponent guilty of an antitrust violation. The throwsters have made such a showing.

In order to remove the privilege on attorney-client documents bearing on the associates' opinion that there was a substantial likelihood of success in declaring the opponent's patents invalid, the throwsters offer Exhibit No.

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[5] The throwsters have been using the terminology that the associates had "knowledge" of the invalidity of Leesona's Permatwist patents in the terminated Boston and South Carolina lawsuits. Such a characterization is inapposite because an attorney cannot "know" that a patent is invalid but only can render a professional opinion that there is a substantial likelihood that a court would find the patent invalid. A patent does not become invalid until declared so by the final appellate court and therefore there can be no such "knowledge" of invalidity, only surmise thereof.

2129, a one page letter from Dr. Norman C. Armitage, corporate general house counsel and Vice-President of the client, DMRC, to Mr. John H. Bolton, Jr., Vice-President in charge of Marketing for the client, Whitin Machine Works, dated August 25, 1961. The exhibit states:

> The sessions this week at Mr. Brumbaugh's office [patent attorney for the clients] were very valuable. The principal reason for our meeting was to go over the prior art patents in the matter of the Leesona v. Cotwool suit [in South Carolina] and we made notations on a good number which should convince any court that the three [Permatwist] patents [owned by Leesona] in suit are fully anticipated [i.e., invalid under 35 U.S.C. § 102(a)].

The associates make two counter arguments. First, this statement was made before Burlington, the largest throwster in the world and a party on the opposing side in this case, entered into a 1963 settlement agreement, via its subsidiary, Madison Throwing Co., with Leesona in which it acknowledged the validity of the Permatwist patents.[6] Second, the settlement agreement on the patent issue was prompted by a declaration of validity of the Permatwist patents in the courts of Canada, a country which has patent laws very similar to those in the United States, in February, 1964, more than one month before the settlement agreement now being questioned was finalized.

These counter arguments, although they may carry the day on the merits, need not be answered by this court at this time because the court's function in making a

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[6] Stoddard and Seem U. S. Pat. Nos. 2,803,105, 2,803,106, and 2,803,108. These patents were declared invalid under 35 U.S.C. § 102(b) for a public use more than one year before the applications were filed in In re Yarn Processing Patent Validity Litigation, 360 F.Supp. 74 (M.D. Fla. 1973), reversed, 498 F.2d 271 (5th Cir. July 29, 1974). Of course, no one in 1964 had the benefit of foresight as to this 1973 decision.

determination as to whether there has been a prima facie showing is akin to that of a grand jury, i.e., only the evidence of the prosecution is considered and in the most unfavorable light against the accused.

In order to remove the privilege on attorney-client documents bearing on the associates' opinion that there was a substantial likelihood of success in proving the opponent guilty of an antitrust violation, the throwsters offer Exhibit No. 633-A, a three-page letter from Dr. Armitage to Mr. Leo M. Soep, a French patent agent and the representative of the client, Chavanoz, dated August 19, 1963. the exhibit states:

> You will recall that at the time of our meetings in New York and Boston I raised the question as to whether there might not be a valid counterclaim by Whitin against Leesona for violation of the anti-trust statutes. Granville [M. Brumbaugh, Sr., Esquire] has taken this under consideration and has now reached an opinion that Whitin would have a good chance of establishing such a counterclaim. He is consulting with an expert in anti-trust matters to see whether this expert agrees with him, and a decision will then have to be made as to whether the counterclaim will be lodged.

Even though armed with an attorney's opinion that the Permatwist patents owned by Leesona were invalid under 35 U.S.C. § 102(a) for anticipation by the prior art and that Leesona was most probably guilty of violating the antitrust laws, the associates entered into the settlement agreement with Leesona on March 31, 1964. The two exhibits quoted above would indicate alone a prima facie showing of bad faith in settling the Boston and South Carolina lawsuits out of court. The United States Supreme Court has said that it is not enough for the party owning the patents to be in good faith in settling a lawsuit; *all* parties must be in good faith. See *Standard Oil Co. (Indiana)* v. *United States*, 283 U.S. 163 (1931).

Thus, this prima facie showing of an antitrust violation establishes the tort exception to the attorney-client privilege, requiring production of all confidential communications that show the opinions of the associates' attorneys with respect to' first, the invalidity of Leesona's Permatwist patents; second, the non-infringement thereof by ARCT FT machines; and third, the violation of the antitrust laws by Leesona.

This tort exception to the attorney-client privilege will be considered to be applicable only after, and not before, the settlement negotiations were begun because the alleged bad faith could not come into existence until such time. It is not a tort for an attorney to give an opinion to his client that there is a good case against the opposing party. Only after the client, armed with the attorney's opinion, enters into negotiations with the opposing party *and* eventually settles a patent case, does any inference of an antitrust conspiracy arise. Because of the nature of a patent as a limited monopoly, settlement of patent cases must be viewed by the courts with extreme care.[7] Of course, if the case is not settled and goes to trial on the merits, as occurred in the Brooklyn litigation between DMRC and Leesona, the abortive settlement negotiations

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[7] As a legislative reaction to the settlement of interferences in the Patent Office, found by lower federal courts to be sometimes an antitrust conspiracy in violation of Sherman Act § 1, and eventually so recognified in 1963 by the Supreme Court in Singer, supra, Congress enacted 35 U.S.C. § 135(c) (1962) which provides:

> Any agreement or understanding between parties to an interference, including any collateral agreements referred to therein, made in connection with or in contemplation of the termination of the interference, shall be in writing and a true copy thereof filed in the Patent Office before the termination of the interference as between the said parties to the agreement or understanding. . . .

cannot give rise to any inference of an antitrust conspiracy.

/s/ Robert W. Hemphill
ROBERT W. HEMPHILL
United States District Judge

Columbia, South Carolina

December , 1974

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 73-2450

[Filed Mar. 28, 1974, William K. Slate, II, Clerk]
CELANESE CORPORATION AND FIBER INDUSTRIES, INC.,
Appellants,

v

LEESONA CORPORATION, *et al.*,
Appellees.

In the matter of:
SUBPOENAS FOR TESTIMONY OF ATELIERS ROANNAIS DE CONSTRUCTIONS TEXTILES AND ARCT, INC.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro.
Eugene A. Gordon Chief Judge.

ORDER

The appellees, Ateliers Roannais de Constructions Textiles and ARCT, Inc., move to dismiss this appeal on the grounds that the district court's order quashing two subpoenas directed against Henri Crouzet, appellees' president, was not an appealable order. The subpoena proceedings below were ancillary to patent and antitrust litigation pending in the United States District Court for the Southern District of Florida. Since the ultimate relief sought by this ancillary proceeding has been denied, and no review nor relief may be had in the main proceedings

in Florida, the district court's order is appealable as a final order under 28 U.S.C. § 1291.[1] *See Natta* v. *Zletz*, 379 F.2d 615, 618 (7th Cir. 1967).

Accordingly, the appellees' motion to dismiss the appeal is *denied.*

/s/ [Illegible]
United States Circuit Judge

/s/ [Illegible]
United States Circuit Judge

/s/ [Illegible]
United States Circuit Judge

[1] The order is a final appealable order notwithstanding the fact that it was entered without prejudice to appellants subsequently seeking subpoenas. *See Natta* v. *Zletz, supra,* at 618.

IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Nos. 73-1930 and 73-2450

CELANESE CORPORATION AND FIBER INDUSTRIES, INC.,
Appellants,

v

ATELIERS ROANNAIS de CONSTRUCTIONS TEXTILES and ARCT, INC.,
Appellees.

Consolidated Appeals from the United States District Court for the District of South Carolina and the United States District Court for the Middle District of North Carolina

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BRIEF OF APPELLANTS

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Does an alien corporation which elects to conduct business in the United States on a regular basis necessarily also accept the obligation to uphold its laws, *inter alia*, by discharging the general duty to supply non-privileged testimony, within the scope of Rule 26(b) of its officers and managing agents when called upon to do so?

2. May an alien corporation engaged in doing business in the United States, *inter alia*, through an Ameri-

can subsidiary corporation resident in North Carolina exempt that subsidiary from the duty to provide non-privileged testimony within the scope of Rule 26(b) of its officers and managing agents by the mechanism of naming a French national, resident in France, as president of both corporations?

3. Was the refusal of the courts below to compel testimony of Henri Crouzet in MDL No. 82 in derogation of a duty imposed by the Federal Rules to aid the search for truth in litigation pending before sister courts?

4. May a federal court, having personal jurisdiction over an alien corporation and its United States subsidiary in a pending case and hence having power to compel appearance of their mutual non-resident, foreign national, president for testimony, utilize the president's allegedly "voluntary" appearance without formal process as a pretext for refusing on "immunity" grounds to issue a subpoena to compel his testimony, while present in the district, in a different civil action pending before another federal court?

5. Does Rule 26(c) give the federal district courts "discretion" to enter protective orders indiscriminately even though good cause has not been demonstrated?

6. May an auxiliary federal district court utilize Rule 26(c) as a pretext for requiring a party seeking discovery admittedly within the scope of Rule 26(b) in aid of a civil action pending before a primary court in another district to furnish an evidentiary good cause showing as a prerequisite to allowing the discovery?

CERTIORARI DENIED